

MAR 25 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FENG ZOU,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 04-73666

Agency No. A96-353-154

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 18, 2008**

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

Feng Zou, a native and citizen of China, petitions pro se for review of the Board of Immigration Appeals' order summarily affirming an immigration judge's

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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decision denying his motion to reopen removal proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252. Reviewing for abuse of discretion, *Salta v. INS*, 314 F.3d 1076, 1078 (9th Cir. 2002), we grant the petition for review and remand.

The motion to reopen filed by Zou’s former counsel Walter Burrier included an unsworn written statement in which Zou stated that he did not receive the notice of his advanced hearing date. The agency did not have the benefit of our recent decision in *Sembiring v. Gonzales*, 499 F.3d 981, 988-90 (9th Cir. 2007) (adopting a “practical and commonsensical” test to determine whether proper notice was provided, and holding that an unsworn written statement of non-receipt was sufficient where requiring a sworn affidavit would “unnecessarily elevate form over substance” in case of claimed persecution). We therefore remand for reconsideration of Zou’s motion to reopen.

PETITION FOR REVIEW GRANTED; REMANDED.